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Law Teck Huat v Tan Leng Choo & Ors

HIGH COURT (PULAU PINANG) — CIVIL SUIT NO 22–251 OF 1997
KAMALANATHAN RATNAM J
1 SEPTEMBER 2004

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Land Law — Conveyancing — Option — Option exercised within stipulated time but sale and purchase agreement not signed — Terms were clear and certain — No terms remain outstanding — Payment of deposit within time limit — Whether valid option existing — Whether court ought to grant specific performance of option

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An option dated 1 September 1993 was granted to one Law Ah Ow to sell the property at RM1.80 per square foot and subject to certain order of court. The property was jointly owned by the first defendant and the estates represented by the second and third defendants. The option was to expire on 31 December 1993. The plaintiff, nominated by Law Ah Ow to exercise the

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option intimated an intention to purchase the property on 21 December 1993. On 20 April 1994 the plaintiff's solicitors sent a cheque being the 10% deposit to the vendors' solicitors. Various correspondences on the sale and purchase agreement that remained unsigned followed and eventually on 5 December 1996, the vendors' solicitors returned the deposit together with interest to the

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plaintiff on the basis that the sale and purchase agreement had not been signed. Consequently, the plaintiff filed for specific performance. The issue was whether there was a valid option existing.

Held, allowing the plaintiff's application for specific performance and dismissing

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with costs the defendant's counter claim for damages:

It was clear that the plaintiff had exercised the option within the stipulated time by tendering the 10% deposit. Even though there was no sale and purchase agreement, the defendant had failed to show that there were matters which remained to be discussed between the parties and which had to be embodied

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in a formal sale and purchase agreement. The option was clearly intended by both parties to have legal effect and the parties must therefore be bound by their intention. There was nothing more left uncertain and when the plaintiff exercised his right by paying the 10% deposit, the agreement became enforceable (see para 6).

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[**Bahasa Malaysia summary**

Satu opsyen bertarikh 1 September 1993 telah diberi kepada Law Ah Ow untuk menjual harta pada harga RM1.80 sekaki persegi dan tertakluk kepada suatu

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arahan mahkamah. Harta tersebut adalah milik bersama defendan dan harta pusaka diwakili oleh defendan kedua dan ketiga. Opsyen tersebut luput pada 31 Disember 1993. Plaintif yang dipilih oleh Law Ah Ow untuk melaksanakan

opsyen telah menunjukkan minat membeli harta tersebut pada 21 Disember 1993. Pada 20 April 1994 peguamcara plaintif telah menghantar sekeping cek untuk 10% deposit kepada peguamcara penjual. Pelbagai surat-menyurat telah dibuat mengenai perjanjian jual beli tetapi masih tidak ditandatangani dan akhirnya pada 5 Disember 1996 peguamcara penjual telah memulangkan deposit bersama faedah kepada plaintif atas alasan bahawa perjanjian jual beli tidak ditandatangani. Akibatnya, plaintif telah membuat permohonan untuk perlaksanaan spesifik. Isu adalah sama ada wujudnya opsyen yang sah.

Diputuskan, menerima permohonan untuk perlaksanaan spesifik dan menolak dengan kos tuntutan balas defendan untuk ganti rugi:

Adalah jelas yang plaintif telah melaksanakan opsyen dalam masa yang ditentukan dengan memberi tender deposit 10%. Walaupun tiada perjanjian jual beli defendan gagal menunjukkan terdapat perkara yang patut dibincangkan antara kedua-dua pihak yang sepatutnya terkandung dalam perjanjian jual beli yang formal. Opsyen itu adalah jelas dimaksudkan oleh kedua-dua pihak untuk mempunyai kesan undang-undang dan oleh itu setiap parti adalah terikat dengan hasrat mereka. Tiada apa lagi yang tinggal yang belum dipastikan dan apabila plaintif melaksanakan haknya dengan membayar deposit 10%, perjanjian itu boleh dikuatkuasakan (lihat perenggan 6).]

Notes

For cases on option, sale agreement not signed, see 8(1) *Mallal's Digest* (4th Ed, 2003 Reissue) 2347

For cases on intention of parties, see 8(1) *Mallal's Digest* (4th Ed, 2003 Reissue) paras 2310–2311

For options, see 8 *Halsbury's Laws of Malaysia*, see para [150.496]

Cases referred to

Charles Grenier Sdn Bhd v Lau Wing Hong [1996] 3 MLJ 327 (refd)

Voo Syun Mui v Yap Mooi Mooi [1984] 2 MLJ 48 (refd)

V Arivanandhan (Darshan Singh Khaira with him) (Cheong Wai Meng & Can Buerle) for the plaintiff.

Cheah Ee Keong (Tan Beng Hong with him) (Peter Huang & Richard) for the defendants.

Kamalanathan Ratnam J:

[1] This is a simple case and the only issue is whether there is a valid option existing.

[2] An option dated 1 September 1993 was granted to one Law Ah Ow ('Law') to sell the property therein described at RM1.80 per square foot and

A subject to an order of court being obtained in respect of the half-share registered in the estate of one Tan Koon Swee deceased. The said property was jointly owned by the first defendant (owning 25% undivided share), the estate of Tan Koon Swee deceased represented by the second defendant (owning 50% undivided share), and the estate of Tan Yu Lim represented by
B the third defendant (owning 25% undivided share). The option was open for 122 days, and expiring on 31 December 1993. The plaintiff through his solicitors intimated an intention to purchase the said property on 21 December 1993. Law then nominated his son, the plaintiff, to exercise the option. The parties had agreed before me that there is no dispute as to the plaintiff's right to sue
C as the option holder. On 27 December 1993 the Administrator of the estate of Tan Koon Swee responded by instructing his solicitors to write to the plaintiff's solicitors and on 15 February 1994 the said solicitors forwarded a draft sale and purchase agreement to the plaintiff's solicitors. On 10 March 1994 the vendors' solicitors wrote a letter requiring the return of the draft sale
D and purchase agreement within seven days from the date of that letter. On 11 March 1994 the plaintiff's solicitors returned the draft sale and purchase agreement with additional terms and on 20 April 1994 the plaintiff's solicitors sent a cheque for RM81,693.29 being the 10% deposit, to the vendor's solicitors. On 10 June 1994 the Administrator of the estate of Tan Koon Swee namely, Tan Koon Seng, died. On 20 March 1995 the plaintiff's solicitors wrote again
E to the vendor's solicitors proposing further additional terms to the draft sale and purchase agreement.

[3] Administration *de bonis non* to the estate of Tan Koon Swee deceased was granted to the second defendant on 30 January 1996 and extracted on
F 2October 1997. On 5 December 1996 the vendors' solicitors returned the deposit together with interest amounting to RM86,076.13 on the basis that the sale and purchase agreement had not been signed. The plaintiff disputed this and filed this action for specific performance.

G FINDINGS OF THE COURT

[4] By consent parties they agreed not to adduce oral evidence nor to cross-examine any witness. The plaintiff's two witnesses tendered their written statements and the defendants were represented by the second defendant who tendered her written statement. Parties by consent accepted all the three
H statements without any cross-examination, and agreed to submit.

[5] It was the plaintiff's case that whilst admitting there was no sale and purchase agreement signed, the option was indeed a valid and binding contract having the effect of law since the option had indeed identified the
I land in question, had fixed the price, and had stipulated that the sale was to be without vacant possession and subject to an order of court being obtained in respect of the estate of Tan Koon Swee deceased.

[6] Having read the witnesses' statements it is clear that the plaintiff had exercised the option within the stipulated time by tendering the 10% deposit (see the Federal Court decision in *Voo Syun Mui v Yap Mooi Mooi*[1984] 2 MLJ 48). I find that even though there is no sale and purchase agreement, as in *Voo*'s case, the defendant had failed to show that there were matters which remained to be discussed between the parties and which had to be embodied in a formal sale and purchase agreement. To my mind the option was clearly intended by both parties to have legal effect, that is to say, to create legally enforceable rights and obligations and the parties must therefore be bound by their intention. The land in question was clearly identified, the price was ascertained and a court order required, to ensure the sanction of the court was obtained in respect of the deceased's estate. There was nothing more left uncertain and when the plaintiff exercised his right by paying the 10% deposit, the agreement became enforceable. It is necessary to repeat the words of the Federal Court in *Charles Grenier Sdn Bhd v Lau Wing Hong* [1996] 3 MLJ 327 when it said that the law leans in favour of upholding bargains and not in striking them down. I therefore had no hesitation in granting an order in terms praying for specific performance and the consequential orders sought, with costs.

[7] The defendants' counter claim for damages for wrongful entry of caveat was dismissed with costs.

Application allowed. Counter claim dismissed.

Reported by Loo Lai Mee